

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DAVID JENKINS, individually and on behalf of all others similarly situated,) CASE NO. 2:23-cv-1874-ALM-CMV
Plaintiffs,)
vs.) JUDGE ALGENON L. MARBLEY
EVO SERVICES GROUP, LLC,) MAGISTRATE JUDGE CHELSEA M.
Defendant.) VASCURA
)
)

**JOINT MOTION FOR COURT SUPERVISED NOTICE
PURSUANT TO 29 U.S.C. § 216(B)**

Plaintiff David Jenkins (“Named Plaintiff”), on behalf of himself and all others similarly situated, brought this action for wage claims pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq. (“FLSA”) against Defendant EVO Services Group, LLC (“Defendant”). (ECF No. 2) The Named Plaintiff seeks to bring his FLSA overtime claims on behalf of Defendant’s employees who are defined as:

All Ohio hourly dock managers employed by EVO Services Group, LLC that worked at least one workweek in excess of 40 hours on or after August 17, 2020.

Named Plaintiff seeks to move this Court to issue Court Supervised Notice pursuant to 29 U.S.C. § 216(b) and *Clark, et al. v. A&L Homecare and Training Center, LLC*, 58 F.4th 1003 (6th Cir. 2023). Named Plaintiff and Defendant (collectively the “Parties”) requested, and the Court granted, a period of discovery for the Parties to focus on the issue of whether there was a strong likelihood he is similarly situated to those he seeks to represent. It is Named Plaintiff’s burden to demonstrate that strong likelihood he is similarly situated to those he seeks to represent exists. See, *Woods, et al. v. Best of Friends Homes Care Services, LLP*, 2:23-cv-00713, _____ WL

_____, at *3 (S.D. Ohio Oct. 2, 2023) (C.J. Marbley), quoting *Clark, et al. v. A&L Homecare and Training Center, LLC*, 58 F.4th at 1101. Thus, Named Plaintiff “must provide a *factual basis* upon which the Court can find that conditional certification is warranted,” mere stipulation between the parties will not suffice. *Woods, et al. v. Best of Friends Homes Care Services, LLP*, at *3. (*emphasis in original*).

Named Plaintiff was employed as a dock manager. (ECF No. 2 at PAGEID #10) *see also*, *Declaration of David Jenkins* at ¶5, attached as **Exhibit A** ("Ex. A") On numerous occasions, he worked more than 40 hours per workweek. (ECF No. 2 at PAGEID #12) *see also*, **Ex. A** at ¶5. Defendant classified dock managers, like Named Plaintiff and those he seeks to represent, as overtime exempt employees and thus did not pay them 1.5 times their regular rate for any hours worked over 40 in a workweek. *See, Ex. A* at ¶¶7-12, *see also Declaration of Barry Y. Freeman* at ¶2, attached as **Exhibit B** ("Ex. B"). The Defendant, while not conceding that it violated the FLSA, stipulates that Named Plaintiff and those he seeks to represent (1) were all dock managers for Defendant; (2) were classified as Motor Carrier Act overtime exempt; and (3) were not paid 1.5 times their regular rate for hours beyond 40 per workweek. Accordingly, the Parties believe Named Plaintiff has met his burden for notice to such other employees pursuant to *Clark, supra*. *See, Ex. A* at ¶¶7-12, **Ex. B** at ¶2.

The Parties will provide notice to the Collective Members in accordance with the following schedule:

1. The Parties jointly submit as **Exhibit C** the proposed Notice and Consent to Join Forms (“Notice Packet”) to be authorized by the Court.
2. Within 14 days of the Court’s entry of an Order approving the Parties’ Notice Packet, Defendant shall provide Named Plaintiff’s Counsel a list (in Microsoft Office Excel format) containing the names, last known addresses (including zip code), cellular telephone

number, and personal email address (to the extent that Defendant has cell numbers and email addresses) of the Collective Members.

Named Plaintiff's Counsel will (a) mail (via First Class U.S. Mail) and (b) email **Exhibit C** to the Collective Members within 14 days of receiving the list. Named Plaintiff may send the Notice by text message (**Exhibit D**) if Defendant does not provide an email address for a Collective Member or if the email is undeliverable. The Collective Member shall have 90 days from the date the Notice Packet is sent to return their Consent to Join Form and opt-in to this case.

Dated: November 7, 2023

Respectfully submitted,

/s/Barry Y. Freeman
Barry Y. Freeman (OH Bar No. 0062040)
Trial Attorney for Defendant
ROETZEL & ADDRESS, LPA
1375 E. 9th Street, 10th Floor
Cleveland, OH 44114
Phone: (216) 615-4850
Facsimile: (216) 623-0134
bfreeman@ralaw.com

/s/ Robert E. DeRose
Robert E. DeRose (OH Bar No. 0055214)
Trial Attorney for Plaintiffs
BARKAN MEIZLISH DEROSSE COX, LLP
4200 Regent Street, Suite 210
Columbus, OH 43219
Phone: (614) 221-4221
Facsimile: (614) 744-2300
bderose@barkanmeizlish.com

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2023, a true and correct copy of the foregoing was served on all parties via the Court's electronic filing system.

/s/ Robert E. DeRose
Robert E. DeRose (0055214)